Money for Life: The Legal Debate in China About Criminal Reconciliation in Death Penalty Cases

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In this article we examine the debate among legal experts in China over the recent practice of death penalty criminal reconciliation (DPCR), which is a program that seeks to reconcile an offender convicted of a capital offense with the victim by requiring the offender to meet with, apologize, and pay economic compensation to the victim in exchange for a death sentence commuted to life in prison. Proponents of DPCR believe it provides important financial and emotional benefits to victims, helps rehabilitate offenders, and alleviates the wider social tensions generated by the offense committed. Opponents argue that DPCR violates the basic principle of equality before the law because the decisions reached using this process are sometimes influenced by public opinion and often biased toward those who can afford to pay compensation. These critics suggest that DPCR should be replaced with a comprehensive system of state compensation for victims of capital offenses. Keywords: China legal reform, death penalty, punishment, criminal reconciliation.

In February 2007 a man referred to only as “Wang X” became one of the most notorious criminals in the history of the People’s Republic of China (PRC). But it was Wang’s punishment, not his crime, that brought him to national attention. In 2005, Wang and his associates robbed and murdered a man named Cai. According to the 1997 Criminal Code of the PRC, murder is a capital offense, so Wang faced a possible death sentence. However, in what would appear to be an unprecedented move for capital offenses in China, the judge at Dongguan Court in Guangdong brokered a deal. In return for a compensation payment of 50,000 RMB by Wang to Cai’s family, the family consented to Wang receiving a suspended death penalty, in effect a commuted life sentence.
sentence (*Fazhi Ribao* 2007; *Xinxi Ribao* 2007; Zhonghua Wang Shipin 2007). This practice is known as death penalty criminal reconciliation or DPCR.

Death penalty criminal reconciliation is not codified in Chinese law. An amendment in March 2012 to the Criminal Procedural Law (CPL) allows criminal reconciliation for domestic disputes, where the maximum sentence is three years, and official misconduct, where the maximum sentence is seven years. But the amendment does not extend to capital offenses (Zhongyang Zhengfu Menhu Wangdian 2012). Nevertheless, DPCR is increasingly being practiced in China, and the procedure underpinning it (in Articles 277–279) mirrors that used for the two offenses noted above. In summary, the offender and the victim (or the victim’s family, if the victim has been killed) participate in a series of “criminal reconciliation meetings,” presided over by the officiating judge. During these meetings, the parties are expected to resolve their differences through discussion. If an agreement on compensation can be reached, the judge will usually decide to commute the offender’s death sentence to life in prison. The offender is also expected to exhibit a sufficient level of contrition for the crime committed (Chen 2008).

The recent practice of DPCR has precipitated an impassioned response from the pro–death penalty Chinese media and public, particularly in reaction to controversial cases such as that of Wang X. Many people have angrily denounced DPCR as “money for life” and demanded that the death penalty be applied consistently to all capital offenses. Less well known but no less significant is the debate that has taken place within the Chinese legal community and the clash of values it has revealed among a group that was previously united in its pursuit of legal reform and a reduction in the use of the death penalty. Our article examines that debate.

Supporters of DPCR point to the financial relief it gives to victims as well as the emotional relief provided through a combination of compensation and contrition from the offender. They also view DPCR as a better form of punishment than the death penalty, arguing that it can rehabilitate the offender and restore social harmony following the disruption created by the offense.
Opponents of DPCR do not focus on the issue of punishment. Instead, they champion the cause of equality before the law and are critical of the way in which decisions under DPCR are often influenced by extraneous factors such as the wealth of the parties involved or the strength of public opinion. Their aim is to ensure that a proper system of state compensation is instituted. Notwithstanding these differences of opinion, both groups articulate views that pose challenges to the authority of the Chinese Communist Party (CCP), as we argue below.

The Background to DPCR: Toward a “Harmonious Society”

The use of DPCR in China can be traced back to the “harmonious society” concept, which was first mooted at the third plenary session of the Tenth National People’s Congress in March 2005 and more clearly articulated in the official document “Decision of the Chinese Communist Party” in October 2006 (Xinhua Wang 2006). More a broad aspiration than a concerted shift in government policy, the harmonious society idea has sought to restore the age-old Confucian ethics of societal balance and harmony. This is specifically in response to the alarming rise in socioeconomic tensions and dislocations caused by the torrential pace of economic reform in the post-Mao era.

Although this change in official focus was important in itself, its legal significance was the reference in the 2006 decision to the necessity of “balancing leniency and severity” in criminal proceedings. This approach marked a concerted shift away from the previous policy known as “strike hard” that had been implemented since the early 1980s via a series of sporadic government campaigns (Trevaskes 2012). By way of background, “strike hard” (short for “strike hard at serious crime”) constituted a draconian approach to punishing criminals for committing crimes deemed to be a threat to social order. Such crimes not only included capital offenses such as murder, manslaughter, and drug trafficking, but also minor offenses, such as drinking and driving and public disturbances. The emphasis of “strike hard”
was on “severity” in the degree of punishment imposed and “swiftness” in the application of punishment so as to provide the maximum deterrent. An inevitable consequence of this approach was a dramatic rise in the application of the death penalty. The number of capital offenses also went up, from twenty-eight in 1979 to seventy-five in 1997 (Lu and Miethe 2007).

But by the early 2000s, the wisdom of “strike hard” was increasingly being called into question. Senior police officers expressed their disillusionment with this expensive, labor-intensive, and ultimately ineffective approach to combating crime (Trevaskes 2012). Moreover, as Chen Yili (2012) points out, crime rates in China were stabilizing at this time, making the fight against crime less pressing than previously thought. There was also a growing willingness among the CCP elite to adopt a more measured perspective toward criminal procedure, while still recognizing that crime was inevitable (Renmin Wang 2008). The combination of these factors contributed to the emergence of “balancing leniency and severity.”

China’s legal experts also contributed to the shift. Many of them had long been strongly opposed to “strike hard.” Comprising legal practitioners from the Supreme People’s Court (SPC), together with scholars from leading Chinese universities and the influential Chinese Academy of Social Sciences (CASS), legal reformers were able to take advantage of their growing influence within the party apparatus to push for “balancing leniency and severity” to replace “strike hard” as the guiding principle underpinning China’s criminal procedural policy (Zhongguo Xinwen Wang 2008).

The appropriate use of the death penalty has been a pivotal feature of “balancing leniency and severity.” To be clear, abolition is not currently an option. Public support for the death penalty is extremely high, with one survey suggesting that 80 percent of respondents are in favor of retaining it (Oberwittler 2010). “Balancing leniency and severity” has thus focused on reducing execution rates under the official banner of “Retain the death penalty, strictly limit its use,” better known as “Kill fewer, kill carefully” (Trevaskes 2013). The outcome has been successful, as death penalty cases continue to fall. One reason put for-
ward for this drop is that the number of capital offenses has gone down to fifty-five from a high of seventy-five in 1997 (Renmin Ribao 2012), although most of the crimes removed from the capital offenses list, such as antique smuggling, rarely resulted in execution. A more likely reason is because of the emergence of DPCR.

**Understanding DPCR**

Although DPCR is a very recent phenomenon in China, it can be traced in part to mediation, which has a long history in China, notwithstanding DPCR’s focus on financial compensation and criminal rather than civil matters. During the imperial period, disputing parties were expected to take their differences to the local official or village elder, who would attempt to find a middle ground in the disagreement (Li 1978). Mediation was considered the most equitable method of solving a dispute and the quickest way of restoring social harmony, an imperative of the Confucian canon. It also drew on an overriding Confucian moral requirement that people must compromise or “give way” in a dispute rather than “selfishly” assert their rights (Peerenboom 1993, 46). Taking a dispute to the local court was frowned upon as needlessly dragging the matter out and thereby disrupting the social equilibrium. Indeed, Hucker (1975) notes that if a dispute did end up in court, the magistrate would often fine those involved for failing to resolve their differences through mediation.

The strong preference for mediation over litigation was equally apparent during the Mao era under the slogan, “Mediation is primary, adjudication is secondary” (Lubman 1999). “Mediation committees” were set up in every Chinese neighborhood, carefully controlled by the CCP to suit its own political purposes. A fallout between the parties was often politicized, with the mediator expected to “reeducate” the disputing parties in line with Maoist thinking. So, for example, a mediator might decide that a husband accused of mistreating his wife was guilty of harboring “feudal tendencies” and was therefore required to undergo political indoctrination (Lubman 1999).
In light of this entrenched tradition of mediation, the use of criminal reconciliation was largely well received by the Chinese legal community when it was initially applied to noncapital offenses after 2004, albeit illegally at that time. However, its later application for capital offenses has caused a sharp divide among Chinese legal experts.

**Supporters of DPCR**

*Encouragement from the Courts*

Supporters of DPCR have a higher profile than their anti-DPCR counterparts and have closer links to the senior party apparatus. Those supporters from an academic background include university scholars such as Chen Guangzhong from the China University of Political Science and Law, Zhao Bingzhi of Beijing Normal University, and Liu Renwen, director of criminal law research at CASS. Perhaps more significantly in terms of the potential for impact on government policy, DPCR supporters from a practicing background include members of the SPC, China’s highest court.

The SPC has led the way in reducing the number of executions in China after it won back the right of final review of death penalty cases in October 2006. The court had lost that right with the onset of “strike hard” (*China Daily* 2006). In 1983, the National People’s Congress gave provincial courts the right to make the final decision on death penalty cases (Trevaskes 2012), often a popular option with local party leaders in charge of funding the courts (Lu and Miethe 2007). But with the right of final review restored, the SPC has been empowered to ensure greater consistency in the way legal criteria are applied to death penalty cases across China.

While never explicitly advocating DPCR, the SPC has encouraged local courts to carefully consider DPCR-related factors, such as compensation and contrition, as grounds for leniency for capital offenses. For example, in 2006 SPC leaders gave a series of guideline speeches on the use of greater leniency, claiming that in most capital offense cases, a death penalty sentence should not be issued
if the offender obtained the forgiveness of the victim or the victim’s family and could offer compensation (Sun 2010). The SPC has also given more and more space to DPCR proponents in its newspaper, the Gazette of the Supreme People’s Court, and on its website, www.court.gov.cn/. Our own research shows that in 2007, in response to the “Wang X” case, the SPC published articles for and against DPCR in roughly equal numbers. However, in 2010, when the SPC published an online discussion of DPCR, more than three-quarters of the articles were written by supporters. Subsequent SPC-sponsored debates have shown an even greater bias in favor of those who champion DPCR.

**Arguments in Favor**

One of the most frequently made arguments in favor of DPCR is that it provides essential financial assistance to the victim or the victim’s family if the victim has been killed. If the victim is an adult, his or her death often deprives the family of a vital source of income, leaving it in a potentially tenuous financial position. Although the amount of state compensation for criminal cases is increasing (Renmin Ribao 2012), it is generally accepted in China that such amounts remain insufficient. While pursuing an offender through the civil courts is possible, Zhang Weijian (2007) notes that payments for death penalty cases are often very low. By contrast, under DPCR the offender will usually pay a much greater compensation sum at the prospect of escaping the death penalty. Li Honghui, a member of the Dongguan Court in charge of the “Wang X” case, insisted that the 50,000 RMB compensation payment was a good solution to the lack of alternative compensation (Nanfang Zhoumo 2007). Sometimes the payments can be as high as 500,000 RMB (Sun 2010).

In addition to financial benefits, DPCR is believed to offer emotional benefits by alleviating the psychological damage caused to the victim or the victim’s family. Chen Jingchun (2008) of Xian’s North West University of Politics and Law believes that an apology from the offender, which accompanies the payment of compensation, helps to provide closure for victims, going some way toward appeasing their hurt and anger. Chen Guangzhong
(2011) claims that the forgiveness that derives from DPCR is beneficial to victims’ mental health. Wang Min and Hu Qiaolin suggest that DPCR gives victims a moral and emotional boost by enhancing their status in court proceedings from “witness to an equal member of the dialogue” (Wang and Hu 2010, 247).

Other arguments put forward by DPCR supporters suggest that they view it as a better form of punishment than the death penalty. By way of background, there are typically three justifications for enforcing the death penalty as a mode of punishment: retribution, deterrence, and incapacitation. Retribution is the belief, that in applying the death penalty, the offender gets the punishment he or she deserves—a “life for a life” in murder cases. Deterrence reflects the view that the severity and finality of the death penalty discourage people from committing capital offenses. Incapacitation refers to the physical prevention of the offender from reoffending, in a permanent and irrevocable way.

Still other exponents of DPCR, while not openly rejecting any of these justifications for punishment, seem to prefer rehabilitation and restoration. Rehabilitation refers to reforming the attitude and behavior of offenders so that they can see the errors of their way. This approach is at the very heart of DPCR, according to its advocates. For example, Jiang Shuiping (2013) of the Xiajiang County Court (Jiangxi province) believes that requiring the offender to meet directly with victims and seek their forgiveness can enable the offender to “turn over a new leaf.”

Rehabilitation also draws on the belief that the punishment should fit the individual, rather than fit the crime, as with retribution. This perspective also forms part of the pro-DPCR stance. For example, Chen Jingchun (2008) and Hou Zhiwu (2012) argue that DPCR allows for a more individualized punishment of offenders, one that takes into account mitigating circumstances that might ordinarily be overlooked during the trial.

Restoration focuses on reconciliation through the participation of all the parties involved in the dispute—offenders, victims, and even the wider community. Its end goal is the attainment of a just society. There is a clear link here with DPCR, given its focus on bringing the parties together by holding “criminal reconciliation meetings.” Moreover, a number of proponents suggest that DPCR
is beneficial to society as a whole. Chen Luolan of East China University of Politics and Law in Shanghai insists that appeasing victims’ anger during their meetings with the offender “repairs social relations” (2009, 68) by reducing their hostility to the offender and to the offender’s family. Peng Xinlin and Zhao Bingzhi believe that the financial compensation under DPCR can soothe social tensions created by the prospect of economic hardship following the murder or incapacitation of a key income provider. Successfully balancing the victim’s and offender’s benefits, they argue, can “quell this social clash” (2010, 54).

Liu Renwen (2010) believes that if victims feel adequately compensated by the outcome of the DPCR process, they are much less likely to cause social unrest or disturbances by protesting at court or petitioning a higher level of the court apparatus. In some cases, victims or their families have taken drastic measures in order to “attain justice,” such as drinking pesticides in front of the presiding judge (Nanfang Zhoumo 2007). Chinese authorities greatly frown upon this kind of aggressive and publicity-prone petitioning of the courts for its disruption of social order and negation of the principles of “harmonious society.”

**Successes and Roadblocks**

How successful have advocates of DPCR been at having their ideas implemented? The very fact that DPCR is being practiced in China suggests some degree of success. As we have seen, the SPC has played a pivotal role in this through its 2006 guidelines and the increasing space it has allocated to the views of DPCR supporters in its newspaper and on its website. Jiang Shuiping (2013) has concluded that DPCR has become “an important factor to consider in the judging of death penalty cases.” But DPCR is not legal, and whether it is likely to become so is unclear, although some progress is being made in this direction. We noted earlier the 2012 amendment to the CPL legalizing criminal reconciliation in certain noncapital offenses. This move, in itself, might be considered a victory for DPCR supporters.

One of the main roadblocks confronting the pro-DPCR school is DPCR’s unpopularity with the Chinese public, where a belief
persists that it is applied too liberally and is wholly inappropriate in certain controversial cases. One such case was that of Li Changkui, who was sentenced to death in 2010 for the rape and murder of two people, including a child. In 2011, the Zhaotong Middle Court in Yunnan province commuted Li’s sentence to life in prison because he had voluntarily turned himself in and paid a considerable sum in compensation to the victim’s family. However, the subsequent public outcry, including demonstrations outside the courtroom and online via Renren and Weibo, was so vociferous that in August 2012 the Yunnan Higher Court in Kunming reversed the Zhaotong verdict and sentenced Li to death (Xu 2012).

The CCP responded to the initial reversal of the verdict in 2011 by publishing an article on the official People’s Daily website (Renmin Wang 2011) that made its disapproval of DPCR very clear. The article said DPCR caused public unrest and threatened social stability. Most likely, it was this article that forced the Yunnan Higher Court to reverse the Zhaotong decision and sentence the hapless Li to death, demonstrating the CCP’s continued overarching influence over the authority of the Chinese courts.

In an effort to counter public concerns, supporters have suggested imposing certain limitations on DPCR. One proposal is to outlaw DPCR for crimes that threaten the state or public safety (Zuo 2007). Although such crimes are ill-defined by advocates, it most likely includes acts of terrorism, sabotage, or treason. Some proponents believe that DPCR should only be used where the offender knew the victim because the offender is more likely to demonstrate genuine contrition for the crime committed (Yu 2009). Yet there is no reason that a genuine apology should be forthcoming from offenders who did not know their victims, as illustrated in the Yao Jiaxin case we cite later.

Many supporters of DPCR stress that the offender must be genuinely repentant for the crime committed. As Wang Zhixiang and Zhang Weike put it, “Sincere regret and DPCR must go together” (2011, 40). According to Yu Jian (2009), although the amount of compensation should not dominate the proceedings, sincerity can be judged by how willingly the offender offers to pay compensation. For example, if the offender has money to
spare but insists on bargaining with the victim or the victim’s family, then DPCR should not be permitted. Of course, the flip side of that argument is the possibility of the victim demanding an amount well in excess of what the offender can afford, potentially allowing the victim to control whether DPCR will be applied.

Consequently, the initial enthusiasm for DPCR has been tempered, with scholars such as Peng Xinlin and Zhao Bingzhi moving from ardent expressions of support for DPCR (as in their 2010 article referred to earlier), to condemnation of its inappropriate use in cases such as that of Li Changkui, which they argue “went too far too fast” (Peng and Zhao 2012), given the acute sensitivity relating to the murder of a child. But support for DPCR is still apparent. A recent phrase that captures the desire among supporters not to shirk away from some of the controversies that surround DPCR is that “we must not avoid eating out of fear of choking” (Jiang Shuiping 2013). More significantly, the SPC has not given up on DPCR; its website continues to champion its cause. In fact, Jiang Zhiru (2013) claims that the application of DPCR is on the rise. Based on 239 cases from an intermediate court in an unnamed province, Jiang notes that in 2009, 16 percent of capital offenses were reconciled, 23 percent in 2011, and 29 percent in the first half of 2012.

Challenges to the CCP

To what extent are the views of DPCR exponents at odds with those of the CCP? Their views look quite aligned. For example, some exponents credit DPCR with fulfilling the CCP’s broad political objectives of “harmonious society” and “balancing leniency and severity.” Yu Jian (2009), who is the deputy of the Shanghai Criminal Court, commends the mitigatory nature of DPCR as “embodying balancing leniency and severity.” The Shanghai Criminal Court has praised DPCR as “a road to progress” in realizing the “kill fewer, kill carefully” policy (You 2009, 56). Tian Hongjie (2010) of Renmin University insists that it would be inappropriate to ban DPCR because it conforms to the CCP’s “balancing leniency and severity” position. Peng and Zhao
argue that DPCR is worthwhile because it “realizes the harmonious and stable development of society” (2010, 54).

We should also note that DPCR advocates are not looking to overhaul the current legal system. Instead, they see DPCR as a remedy for some of the inherent problems with the system, such as overapplication of the death penalty and the absence of an effective state compensation program for victims of capital offenses. So, on the face of it, this group of thinkers takes a position that is in rough accord with the CCP’s.

That said, some of the arguments put forward by DPCR proponents are potentially in conflict with party perspectives. Although they emphasize the importance of establishing social order and harmony, many supporters appear to value DPCR more for its focus on the protection of individual rights, particularly offenders. According to Wang and Hu, the most significant quality of DPCR is that it preserves the life of the individual offender, which they describe as “the most important human right” (2010, 247). While the CCP pays lip service to the inviolability of individual rights in the various directives and white papers on human rights that it has published since the early 1990s, successive constitutions make it very clear that the collective interests of state and society take precedence over and above those of the individual.

Relatedly, the introduction of DPCR is presented by exponents as part of a new way of thinking about crime in which individual rights as well as those of the state are taken into account. Indeed, Jiang Shuiping (2013) goes so far as to suggest that DPCR imposes necessary constraints on the sometimes arbitrary authority of the state by giving the victim and the victim’s family a more significant role in proceedings through the reconciliation process.

Opponents of DPCR

Turning to opponents of DPCR, those whose writings we have come across are primarily from an academic background, although one or two are practitioners. In general, opponents are
not as close to the CCP as their pro-DPCR counterparts. They work in universities rather than for party-affiliated organizations, and they have no discernible presence in the SPC or other important legal organs such as the Supreme People’s Procuratorate. The most prolific voices include Zhang Weijian of Qinghai University, Liang Genlin of Beijing University, and Sun Wanhui of East China University of Politics and Law.

Arguments Against

One of the key points made by DPCR’s critics is that it violates the basic principle of equality before the law. Some offenders who are convicted of a capital offense are executed following the DPCR process, while others are fortunate enough to have their death sentences commuted to life in prison. This is inevitable, of course, but it does not make it any more acceptable to those who reject the practice. We have already noted the controversial case of Li Changkui. Similarly, Wang Mansheng of Jiangxi Normal University (2011) highlights the case of Xian music student Yao Jiaxin, who was executed in June 2011 for killing a waitress, despite offering a considerable sum in compensation, showing genuine remorse, and apologizing profusely to her family. In this case (like that of Li Changkui), Chinese public opinion was vehemently against Yao, particularly when the media revealed (possibly inaccurately) that his father was a senior military official, thereby implying that Yao had enjoyed a privileged upbringing and would avoid the death penalty because of his father’s wealth and connections. The subsequent uproar at the prospect of Yao escaping the death penalty (including an online survey in which more than 96 percent of the 11,100 respondents demanded Yao’s execution) is thought to have sealed Yao’s fate (Chen 2011). Contrast this, Wang Mansheng argues, with the no less serious case of “Wang X,” who did evade execution, and the outcome of the DPCR process is unconscionably unfair and unequal.

Public opinion is not the only factor that can lead to the unequal treatment of offenders under DPCR. Another influential factor is the parties’ financial status. In some cases, the victim’s family is already sufficiently wealthy and does not need any com-
pensation, precipitating a collapse in DPCR negotiations and the subsequent execution of the offender (Wang 2011). Of equal concern is the apparent bias of DPCR toward wealthy offenders. Put simply, those who can afford to pay a significant sum in compensation are much more likely to receive a commuted life sentence under DPCR than those who cannot afford to do so. Li Hongjiang states, “If you have money, you will get a lenient sentence; if you are impoverished, you will not” (2006, 13). Shan Shibing (2012) agrees with Li, deriding what he sees as the injustice of the entire DPCR process, with particular disdain directed toward compensation payments, which he suggests should more accurately be referred to as “reconciliation fees.”

Building on this point, Shan (2012) reiterates a view articulated by some DPCR supporters that discussions over compensation amounts often dominate the DPCR process. It becomes little more than an exercise in horse trading between the parties, or as Shan puts it, “an unsightly trade-off between money and the victim’s rights.” Ge Lin (2010) believes that compensation is usually the only factor considered by the officiating judge in reaching a decision on behalf of the offender. Indeed, in some cases, the offender does not even attend the “reconciliation meeting” because he or she is still being detained. However, this issue is not seen by the judge as an obstacle to reconciliation, provided a suitable sum in compensation can be agreed on the offender’s behalf.

Mei Chuanqiang and Zhou Jianda (2012) have identified other extraneous variables that violate the basic principle of equality before the law. These include the closeness of the relationship between offender and victim, the judge’s skill as a mediator, and the extent to which the judge believes a commuted life sentence might incite public uproar, bringing us back to the public opinion issue. With these and other factors in mind, Sun Wanhui concludes that DPCR “sacrifices the entire principle of fairness” (2010, 185).

A number of other criticisms are leveled against DPCR. Chen Luolan (2009), who supports DPCR except in murder cases, believes that it gives victims too much autonomy in determining the fate of the offender, something that they are unqualified to
do. Similarly, Wang laments what he sees as the subordination of objective legal standards to the whims of the victim, describing this as “allowing the victim to drag the state by its nose” (2011, 117). Sun (2010) points out that the amount of compensation paid is decided not by the seriousness of the crime, as it should be, but by the victim’s family, while Liang Genlin condemns DPCR for reaching decisions without adequate regard to legal procedure, insisting that DPCR is “not always procedural and sometimes even antiprocedural” (2010, 3). Li Long (2010) of Wuhan University argues that DPCR only exacerbates grave problems that already exist within the Chinese legal system. In a sharply worded article, Li refers to DPCR as “drinking poison to quench a thirst.”

One example of an existing legal problem that DPCR exacerbates is corruption. Given that judicial discretion is such an integral part of the DPCR process, unprincipled judges are susceptible to taking or even demanding bribes (most likely from the compensation-paying offender) in order to reach a particular decision (Shen 2008; Chen 2009; Liang 2010). Another abuse of power deriving from DPCR is the coercion of the parties into participating in the reconciliation process through different levels of “persuasion.” This includes using people with influence over the parties, such as their employers, to repeatedly “persuade” them to participate, threatening the parties with the adverse consequences of refusing to participate or illegally detaining the offender indefinitely until a sufficient level of compensation has been offered. As one Chinese defense lawyer noted at a conference in 2012,

The presiding judge was very actively conducting mediation between the two parties. He had actually implied that as long as my client could compensate, he would not give the death penalty. However, very unfortunately, my client was really too poor to afford that. As a result, no agreement was reached in the first-instance trial and my client is still detained at present. (Rosenzweig et al. 2013, 480)

Opponents believe that these and other abuses of power have been made worse by the introduction by the SPC and the Supreme
People’s Procuratorate of specific criteria for measuring the performance of local courts, including an annual target quota for “reconciled cases” under DPCR (Rosenzweig et al. 2013). The success of judges in fulfilling performance criteria relates directly to their bonuses and prospects for promotion. As such, they have a strong incentive to put pressure on the parties to agree to DPCR (Rosenzweig et al. 2013).

But Chinese judges are not the only people being compromised by DPCR. So, too, are Chinese lawyers, according to critics of DPCR. Persuaded of the benefits of DPCR, some lawyers are now acting merely as intermediaries between the parties and the judge to get their clients to accept the offer of DPCR. Although this does not constitute an abuse of power, it does constitute a dilution of the role of lawyers, from challenging public power to acting as “go-betweens,” as some Chinese lawyers have claimed (Rosenzweig et al. 2013).

As an alternative to DPCR, opponents propose a more robust and consistent scheme of state compensation. Zhang Weijian (2007) insists that DPCR would not exist if the state provided proper compensation to victims of capital offenses. Citing Rousseau’s social contract theory, Sun argues that the state is responsible for protecting its citizens, so if someone is harmed by crime, the state has failed in its duties and should compensate the victim. According to this argument, DPCR “in reality is the state shirking its responsibilities” (2010, 189–190). Li Long (2010) agrees, claiming that developed countries provide state compensation for serious crimes (for example, the United Kingdom’s Criminal Injuries Compensation Authority), so China, as a rapidly developing country, should do likewise.

Challenges to the CCP

Some of the views of DPCR opponents constitute a direct challenge to CCP perspectives. One example is the outright rejection of any link between DPCR and the realization of the party’s “harmonious society” ideal. According to Shan Shibing (2012), it is not only incorrect—or as he puts it, “an illusion”—to suggest that DPCR can somehow help achieve harmony in society. More
importantly, Shan says, those who value it for allegedly realizing CCP objectives contradict an established principle of the rule of law—namely, that law is independent of the policies, directives, or goals of government. Liang Genlin concurs, criticizing the manner in which DPCR appears to serve party policy, specifically the CCP’s “harmonious society.” Liang dismisses DPCR as “a dogmatic understanding of the criminal procedural law policy of balancing leniency with severity” (2010, 3). A similar point is made by Sun Wanhuai (2010).

These criticisms are significant because they directly counter the tradition of rule by law in China—the idea that law is a tool that can be manipulated by the government to suit its political and economic purposes. Taking constitutional rights as an example, in the 1975 state constitution, two completely new rights were introduced in an effort to maintain the radical legacy of the ailing Mao Zedong: the right to strike (Article 28) and the “Four Great Freedoms” (Article 13)—speaking out, airing views, holding debates, and writing big-character posters. However, these rights were deleted from the 1982 constitution as China moved toward political stability and economic reform with the ascent of Deng Xiaoping. Similarly, in an effort to facilitate the continued social development of the early postrevolutionary era, Article 95 of the 1954 constitution gave citizens “the freedom to engage in scientific research, literary and artistic creation, and other cultural activities.” However, Article 12 of the 1975 constitution rephrased this right to “serve proletarian politics, serve the workers, peasants, and soldiers, and be combined with productive labor,” thus mirroring the radical perspectives of the Cultural Revolution (Cohen 1978).

A second way in which DPCR opponents challenge the CCP is by prioritizing the rights of individuals in a manner that runs counter to the party’s emphasis on the collective interests of state and society. The emphasis on individual rights is partly reflected in the insistence that social harmony should not be a consideration when determining the merits or failings of DPCR. It is also reflected in the importance that opponents attach to the principle of equality before the law, a principle they claim is consistently violated by the application of DPCR.
Conclusion

What are we to make of the legal debate in China over DPCR? What is its wider significance? The first point to make is that the debate is just one of many going on inside China within the broad realm of the social sciences. Chinese economists, for example, are devoting increasing attention to the Beijing Consensus as an alternative to the neoliberal policies of the Washington Consensus. Historians in China debate the legacy and contemporary significance of China’s past, with some wanting a return to Maoist principles of equality and stability and others praising the achievements of different imperial eras and even the republican period that preceded the communist revolution.

Like the others, the legal debate over DPCR is also a challenge to the CCP. To a certain extent, it can be usefully positioned within an alternative discourse on rights. For example, we noted earlier that supporters of DPCR emphasize individual rights ahead of collective rights, a position opposed to the party’s prioritization of the collective. They also see DPCR as a useful means of curbing the state’s autonomy by giving the victim or the victim’s family a more significant role in the proceedings through the reconciliation process. Opponents of DPCR also pose a challenge to party traditions. Besides emphasizing individual rather than collective rights (like their pro-DPCR counterparts), opponents reject any attempts to link DPCR with the realization of CCP objectives, arguing that this directly violates the rule of law.

This discussion leads to a separate point regarding what the debate over DPCR tells us about freedom of political expression in the PRC. Although the views of some of these thinkers are “unofficial” in the sense that they question the establishment line, those who espouse them are not dissidents operating from outside China. Rather, they are an integral part of the state system, employed by the government as university lecturers and researchers and published by government-sponsored journals and government-approved publishing houses. Some of them are even employed by the state as judges or lawyers. Better known for its suppression of unorthodox thoughts than for its pluralistic instincts, particularly during the Mao era, the CCP has now clearly become more tolerant of intellectual freedom of expression.
Perhaps even more significant, the debate over DPCR is not just a debate in itself, a self-contained “high-brow” discussion with no relevance beyond that. Rather, it appears to be having a practical impact. State compensation is increasingly forced on the political agenda by opponents of DPCR. Likewise, the 2012 amendment to the CPL allowing criminal reconciliation for certain noncapital offenses was surely made on the advice of legal experts, most likely by those who support DPCR. At the risk of crystal-ball gazing, it is not inconceivable that the CCP will adopt a moderate form of DPCR, limited in scope and application in the ways that DPCR proponents have suggested. For example, a more fixed and proportionate system of compensation payments to victims or their families is possible. Greater emphasis could be placed on expressions of contrition during “reconciliation meetings.” Certain crimes could remain outside the scope of DPCR, such as premeditated homicide. Close consideration needs to be paid to public opinion on this highly controversial subject, but a more regulated form of DPCR would certainly be a better option for the CCP than the unregulated and unrestrained form that China is practicing now.

Notes

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